

FILED

FEB - 6 2007

 CLERKUNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

GREGORY P. ALLIS,

Plaintiff,

-vs-

TERRELL L. HALASKA, Asst. Secretary,
U.S. Dept. of Education;
DIANE SPADONI, Regional Director,
U.S. Dept. of Education; and
ACS, INC.,

Defendants.

CIV. 06-4135

ORDER

In his pro se complaint, Plaintiff requests that the Court intervene and “settle a dispute” between himself, the United States Department of Education and the Social Security Administration. Plaintiff attaches several letters and other documents to his complaint. These include letters from United States Senators attempting to help Plaintiff resolve the dispute with the Department of Education, and letters from the Department of Education explaining that Plaintiff’s doctor needs to supply the requested information to allow them to make a decision on Plaintiff’s request for a disability discharge. Plaintiff moved to proceed in forma pauperis under 28 U.S.C. § 1915, Doc. 3, and filed a motion for service of the complaint, Doc. 4. The Court will grant Plaintiff in forma pauperis status, but the complaint will not be served on the Defendants as it will be dismissed without prejudice for the reasons set forth below.

Plaintiff requests that the Court look at the attached documents and make a determination of the date of his disability and either order the Department of Education to use the Social Security Administration’s date of disability and forgive his students loans, or order the Social Security Administration to move his date of disability to October 2, 2001, pay him back disability benefits and he will pay off his student loans.

In a letter from Federal Student Aid, dated April 26, 2006, the Director of Customer Care Group, Borrower Services, Diane Spadoni, informed Senator Tim Johnson, that they were unable to

process Plaintiff's discharge application because he had not provided medical documentation from Dr. Aparasu supporting a new date of disability and he had not provided Dr. Aparasu's state of medical licensure. Ms. Spadoni further stated, "Mr. Allis may wish to contact Dr. Aparasu to send us the above information so we may continue the disability discharge process." (Attachment, Doc. 1.)


The documentation attached to Plaintiff's complaint demonstrates there has been no "final agency action" by the Department of Education, within the meaning of 5 U.S.C. § 704. "Two conditions must be satisfied for an agency action to be final. 'First, the action must mark the consummation of the agency's decisionmaking process - it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow.'" *Sierra Club v. United States Army Corps of Eng'r*, 446 F.3d 808, 813 (8th Cir. 2006) (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (quotations and citations omitted)). Plaintiff has been invited to supply additional evidence to support his claim, which will allow the Department to continue processing his request for a disability discharge. This does not mark the consummation of the agency's decisionmaking process. Thus, this action will be dismissed without prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), for failure to state a cause of action upon which relief may be granted at the present time. Accordingly,

IT IS ORDERED:

1. That Plaintiff's Motion to Proceed In Forma Pauperis, Doc. 3, is granted.
2. That Plaintiff's Motion for Service of Complaint, Doc. 4, is denied.
3. That this action is dismissed without prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

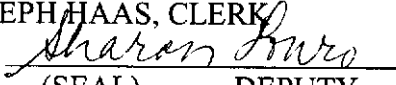
Dated this 6th day of February, 2007.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 
(SEAL) DEPUTY